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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,736	01/28/2004	William Harry Hoffman		1105
7590 William H. Hoffman 604 W Central St. Chippewa Falls, WI 54729				
EXAMINER CHOL PETER H				
ART UNIT 3623		PAPER NUMBER		
MAIL DATE 09/25/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/765,736

Applicant(s)

HOFFMAN ET AL.

Examiner

PETER CHOI

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is a first **NON-FINAL** office action upon examination of application number 10/765,736. Claim 1 is pending in the application and have been examined on the merits discussed below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is recited as a system, but lacks the requisite hardware elements (i.e., a processor, memory, database) representative of a system. Thus, it is unclear whether claim 1 is directed towards a system (apparatus) or a process (method). Clarification is required.

The second paragraph of 35 USC 112 requires a claim to particularly point out and distinctly claim the subject matter which the appellant regards as his invention. However, the "invention" referred to in the second paragraph of 35 USC 112 is also subject to the requirements of 35 USC 101. This section of the statute requires that in order to be patentable the invention must be a "new and useful process, machine,

manufacture, or composition of matter, or any new and useful improvement thereof". A claim intended to embrace or overlap *two* different statutory classes of invention set forth in 35 USC 101 is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. A single claim which purposes to be both a product or machine and a process is ambiguous and is properly rejected under 35 USC 112, second paragraph, for failing to particularly point out and distinctly claim the invention. *Ex parte Lyell*, USPQ. 2d (Board of Apptent Appeals and Interferences) 1548, 1551.

A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. In *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990)

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Surholt et al. (US Patent #7,369,910).

As per claim 1, Surholt et al. teaches a unique system of planning and executing production (both with the same minimum time span) of products in Standard Sales Quantities:

(a) starting with an average quantity per day to two or more decimal places **(Table on col. 18; starting inventory is extended to two decimal places; starting quantity is recalculated for each period based on starting inventory and considering sales quantity, reserve inventory, and production quantity);**

(b) automatically modifying that quantity per day through time **(col. 11, lines 4-47, col. 13, lines 22-27; the excess from the preceding period, which results from the difference between the target inventory and the actual inventory, and the exact demand, which is to be produced in the period, are established. The exact demand corresponds to the sales plus the target inventory and minus the starting inventory) {after calculating the sales/demand quantity for a period, the starting and reserve inventory quantities for each subsequent period are automatically updated, which can be modeled as: starting inventory + production quantity – demand/sales quantity = starting inventory of the following period, or production quantity = target inventory level + demand/sales quantity - starting inventory};**

(c) automatically converting the quantity per day to a series of Standard Sales Quantities with variable spans of time between Quantities but whose average over a long period of time equals that of the modified quantities per day **(col. 2, lines 52-53, col. 5, lines 40-44, col. 11, lines 56-58, col. 18, lines 62-67; producing a quant**

quantity corresponding to the closest possible lot size and/or batch size, rounding production quantities to the closest possible lot size and/or batch size);

(d) selling Standard Sales Quantities still in the planned stage, Quantities in production, or Quantities from inventory (**col. 13, lines 25-27; The exact demand corresponds to the sales plus the target inventory and minus the starting inventory**) **{product is manufactured for the purpose of being sold or to satisfy previously sold order/demand quantities; alternatively, product demand/orders can be fulfilled from existing inventory}**).

It was known at the time of the invention that merely providing an automated way to replace a well-known activity which accomplishes the same result is not sufficient to distinguish over the prior art. *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Furthermore, it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. *In re Venner*, 120 USPQ 192.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references discuss production planning based on demand and inventory needs:

- Kudo (US Patent #5,440,681)
- Matoba et al. (US Patent #5,479,343)
- Taoka et al. (US Patent #5,657,453)
- Shiipman (US Patent #5,819,232)
- Gleditsch et al. (US Patent #6,393,332)
- Horne (US Patent #7,058,587)
- Costanza (US Patent #6,594,535)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER CHOI whose telephone number is (571)272-6971. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 22, 2008

/P. C./
Examiner, Art Unit 3623
/Jonathan G. Sterrett/
Primary Examiner, Art Unit 3623